



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

March 8, 2007

The Honorable Judith Spang, Chairman
Resources, Recreation and Development Committee
Legislative Office Building, Room 305
Concord, New Hampshire 03301

Re: HB 665, relative to modifying the applicability of the Comprehensive Shoreland Protection Act

Dear Chairman Spang:

Thank you for the opportunity to comment on HB 665-FN, which would modify RSA 483-B, the Comprehensive Shoreland Protection Act (CSPA) to extend coverage of the CSPA to third order streams, include two statutorily exempted designated rivers and to clarify the definition of water dependent structures. In addition HB 665-FN amends the Department of Environmental Services' (DES) authority to permit public infrastructure as well as repealing RSA 483-B:19, which allows municipalities to seek full exemption from the CSPA. DES strongly supports the intent of this legislation, but has concerns about specific wording and the lack of any provision for additional funding to provide staff to implement the proposed changes.

In 2005, the Legislature established the CSPA Commission to review the effectiveness of the CSPA by passage of Senate Bill 83. In 2006, after 13 months of review, the CSPA Commission filed a final report outlining its conclusions, as well as 17 recommendations for improving the effectiveness of the CSPA. This legislation would enact several of those recommendations. DES supports the proposed changes as discussed below:

- The use of the New Hampshire Hydrologic Database for stream classification, as it is a more accurate methodology of comparing streams. However, the language as proposed still contains references to the previous methodology, which could lead to confusion.
- The inclusion of third order streams, as it is beneficial to water quality to increase the scope of the CSPA. However, without funding for staff and resources, the Department will not be able to implement the program's expanded jurisdiction.
- The inclusion of the Saco and Pemigewasset Rivers under the jurisdiction of the CSPA. Please note that, since all designated rivers would then be included under the CSPA, the statutory language would be clearer if RSA 483-B:20 were simply repealed.
- The proposed clarification of the water dependent structure definition. In accordance with the current language of RSA 483-B:6, Prior Approval; Permits, anyone wishing to "construct a water dependent structure, alter the bank, or construct or replenish a beach shall obtain approval and all necessary permits pursuant to RSA 482-A." There are currently two different definitions of water dependent structure found in the CSPA. The

DES Web site: www.des.nh.gov

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095


Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964

intention of the original definition was to identify those structures which were located within the bounds of surface waters that would require a permit under RSA 482-A. The definition found in RSA 483-B:4, XXVI, added in 2002, defined the structures by use. This created confusion as to whether certain structures outside the wetlands jurisdiction, as defined by RSA 482-A, would require a wetlands permit. By revising the definition found in RSA 483-B:4, XXVI to match the original definition found in RSA 483-B:9, II (c), the bill would clarify that the intent of RSA 483-B:6 is to require a permit from the Wetland Bureau only for those impacts which occur within the jurisdiction of the Wetlands Bureau as defined in RSA 482-A.

- The inclusion of public roads and public access projects within RSA 483-B:9, IV-b. These projects provide significant public benefits and are in keeping with the purpose of the CSPA, as outlined in RSA 483-B:2. Currently there is some question regarding the applicability of certain requirements, such as the primary building setback, as they pertain to these projects. By including these projects within RSA 483-B:9, IV-b, the Department would be allowed to review and permit these projects, provided that the intent of the CSPA is met. The projects would no longer be arguably prohibited by the CSPA.
- The repeal of RSA 483-B:19. The authority for municipalities to adopt their own shoreland ordinances and enforce the CSPA is granted through RSA 483-B:8, Municipalities. RSA 483-B:19 allows towns to seek exemptions from the CSPA by having their local ordinances certified by the Office of Energy and Planning as being at least as stringent as the CSPA. Only one town has had its local ordinance certified under this provision. Other towns which have inquired about the certification have opted not to certify due to the fact that once a Town is exempt from the CSPA then the state can not offer any enforcement support. Shorefront owners frequently read RSA 483-B:19, incorrectly assume that their local ordinances have been certified, and then inadvertently violate the CSPA.

DES recommends that this legislation, along with related bills HB 665 and HB 857 be sent to subcommittee so that the necessary corrections can be made. Thank you again for this opportunity to comment on this bill. Please feel free to call me at 271-3503, or Rene Pelletier at 271-2951, if you have any questions or need additional information.

Very truly yours,


for Thomas S. Burack
Commissioner

cc: Representatives O'Connell, Essex, and Sanders